IN THE

SUPREME COURT OF THE UNITED STATES

APRIL TERM, 1967

No. 1467

LUNIE LATTIMER,

Appellant,

vs.

AMERICAN PLAN CORPORATION AND CRYSTAL CLEAR, INC.,

Appellee.

MEMORANDUM CONTRA MOTION TO DISMISS APPEAL

In the early days of the formation of our government the writers of the Constitution of the United States made provisions in Articles I and Article IV against the conspiracy of men who might find themselves adjudicated against in one state to move a few feet across the state line into another state and continue their nefarious operations in spite of the adverse adjudication of the state from whence they had moved. Thus, the provisions aforesaid which provided that full faith and credit given to adjudications of courts of one state by those of another state. Most of the early decisions involved the same parties seeking relief in another state from the same parties as defendants on the same subject matter which had been adjudicated in the other state. Such was the case in *Haddock v. Haddock*, 201 U.S.

562 relied upon by the appellees herein in support of their motion. We contend that said authority does not reach the question here involved.

The fast movement of times and methods have made it necessary for the courts to give to each provision of the Constitution the fullest and most comprehensive construction possible to cope with the ills of the present times. The case at bar, which represents the combination and consolidation of at least seven other cases, does not deal with identical parties in different states but with identical problems and issues where is drawn into question of the validity of the statutes of the State of Ohio as well as other states on the ground of being repugnant to the Constitution. The statutes against fraud and misrepresentation; the statutes against conspiracy and the statutes involving uniform retail installment sales are all involved herein, making it all the more important that this Supreme Tribunal lay down the rules to cope with the present day situation and times.

THE FACTS

In the early sixties there existed in the State of Ohio and in the City of Columbus, a corporation known as The Colonial Finance Company; that company dissolved and reorganized under the name of The American Plan Corporation continuing the same process and purpose of lending money and retaining the same managing officer. Late in October of 1962 a corporation was formed in the City of Columbus under the laws of the State of Ohio under the name of Crystal Clear, Incorporated. It had for its purpose selling of an instrument called a "water softener" which had a valuation on the market of approximately $250.00 to $300.00. Late in October, the managers of the two corporations conferred with each other with the resulting agreement that The American Plan Corporation

was to finance any sale or transaction made by the Crystal Clear Corporation of any water softener that they should dispose of under and by virtue of a security agreement in which was encouched a promissory note, carrying charges, interest and insurance provisions wherein the finance company would be paid in full in the event of the death of the signor of any of the papers and notes, all of which were encouched in close printing on a page of 8½ by 11 inch paper, all of which was furnished to the Crystal Clear Corporation by The American Plan Corporation. It was further agreed between the two managers that the Crystal Clear Corporation was to secure the signatures of freeholders and telephone the names into The American Plan Corporation, who would thereupon accept the assignment of said security agreement, note, etc. at a stated price to be paid to The Crystal Clear Corporation. After the signature was obtained on said 8½ by 11 inch sheet of paper, which signature was obtained by the Crystal Clear agents, who represented to the freeholders, in order to get their signatures that they were signing a receipt for the installation of one of their "water softeners" as a demonstrator for them to show to their friends and to refer their friends to the Crystal Clear Company, through and by virtue of a "form letter" written by the Crystal Clear Corporation to induce said friends to accept their agent, when he should call at their home for which service they were to receive $50.00 fee for each purchaser. After said signature was obtained then the amounts of insurance, carrying charge, interest, etc. was filled in and a copy of same so filled was returned to the signors a few days later with a letter "welcoming them into the family relationship of the American Plan Corporation".

Upon attempts by those who signed and where the "water softener" was installed, to demonstrate same to their

friends, invariably said instrument was inoperative and at no time were any of the signors of said papers able to contact the agents of the Crystal Clear Corporation for the reason that in three (3) months time they had, without notice, moved their offices to different parts of the City of Columbus, Ohio. Because of the activities of the said corporation, the Crystal Clear Corporation was compelled by the State of Ohio to dissolve. These actions were instituted in the Common Pleas Court of Franklin County, Ohio against the American Plan Corporation and the Crystal Clear Corporation, as dissolved, to cancel, set aside and hold for naught the alleged promissory notes and security agreements, etc. which were being attempted to be enforced by The American Plan Corporation. At no place in the record, these cases being tried in a consolidated form, in the Common Pleas Court of Franklin County, Ohio, were the above facts disputed or denied by the appellees.

The identical question and identical issues were adjudicated by the Supreme Court of the State of Kansas in the case of *Credit Company vs. Chiles*, 128 A.L.R., page 726, which laid down the following rule:

"A finance company, which had prepared and delivered to an automobile dealer, forms of notes and conditional sales contracts, bearing a printed form of assignment to itself, and in which, on the day of the sale of the car, by the dealer, took an assignment of the sales contract and purchase notes, it is to be regarded as a party to the transaction against whom the defense of fraud and misrepresentation may be made, rather than as an innocent purchaser for value before maturity."

It is not hard to conjecture or to believe that the appellees in this cause had knowledge of the adjudication on the commercial sales act of the State of Kansas and moved their camp to the State of Ohio.

We contend that the case at bar is an all important case aiming at the protection of the citizens of the United States

under the Constitution, which was made for their protection and was aimed at in Articles I and IV of our Constitution of the United States.

We respectfully submit that the motion of the appellees, should be overruled.

Respectfully submitted,

L. P. Henderson
Attorney for Appellant.

CERTIFICATION

The undersigned hereby certifies that he is duly admitted to practice before this Court and that he has personally served a copy of the Memorandum Contra Motion to Dismiss upon Robert Preston, 50 South Third Street, Columbus, Ohio and John E. Palcich, 10 E. Town Street, Columbus, Ohio, Attorneys for Appellees.

L. P. Henderson,
Attorney for Appellant.